

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.7387 OF 2005

Omprakash Zumberlal Boob Applicant

versus

The State of Maharashtra Respondent

R.S.Deshpande for applicant.

R..Mirza, APP for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 23rd November 2005

PC :

1. Heard Shri Deshpande for the applicant and Shri Mirza for the respondents. On 11th November 2005 this Court had protected the applicant and directed that he should not be arrested till 16th November 2005. In my order dated 11th November 2005 I had recorded statement of Shri Deshpande that he wants to take instructions from the applicant with regard to the dues of co-operative bank namely Pune Co-operative Bank Limited.

2. It appears from a perusal of the application that the applicant is proprietor of Surbhi

Constructions which is carrying on business of building construction in the city of Pune. He was developing one property at Kondhawa Khurd, Pune. One Anand Genu Kalokhe and Bhausahab Anand Kalokhe expressed their desire to purchase a flat in the building which was constructed on this property. It is the applicant's case that the agreement for sale was executed on 12th January 2004 and the consideration was Rs.10.00 lakh. It is his case that on execution of this agreement, earnest money was paid by Kalokhes' and they assured to pay the balance amount of Rs.8.00 lakh after obtaining loan from the co-operative bank.

3. It is his case that the Kalokhes' did not pay the amount and when the applicant was on the verge of cancelling the agreement, the Kalokhes' approached the applicant and assured that they would obtain loan on the basis of mortgage of this flat and pay the amount. They sought documents pertaining to the flat for being forwarded to the bank and complete the formalities for creating mortgage. It is his case that a loan was obtained from bank but the amount was not paid.

4. An offence was registered vide C.R.No.34/2005

at Deccan Jymkhana Police Station against Kalokhes as well as present applicant. The allegations of the bank are that the applicant in fact was in need of finance. It is bank's case that the amount of Rs.8.50 lakh which was availed of purportedly as loan by Kalokhes', has been credited to the account of present applicant. It is the case of the bank that the other accused as well as the applicant with a dishonest intention executed a nominal agreement of sale of the flat. When the loan was sanctioned by the bank, the amount was credited to the account of the applicant and thereupon on the very day this agreement was cancelled. In other words, when the flat was merely agreed to be sold and did not constitute a security of the borrower, the loan was availed of merely with a view to assist the present applicant in getting finance for on going construction project and to appropriate the amount to himself.

5. The case of the applicant is that the amounts are not utilised for construction and while it is true that the account of the applicant is credited, there is no privity as between him and the bank. The entire dispute, therefore, is civil in nature. The applicant in paragraph

no.10 has averred that he is willing to co-operate with the investigating authority and all documents which are necessary, would be handed over. It is his case that he is permanent resident of Pune and is not likely to be abscond. The applicant has also contended that this Court had protected him till date in connection with the said C.R.. It is also contended that the other accused have been enlarged on bail by regular Court.

6. The applicant is present in Court. He was directed to co-operate in the investigation and attend the police station concerned as and when summoned. The applicant agrees to abide by such conditions. Shri Deshpande also states that as far as outstanding dues of the bank is concerned, the applicant, with a view to prove his bona fides, would approach the bank and will make appropriate proposal. He submits that the applicant is also ready and willing to make substantial payment without prejudice to his rights and contentions.

7. In the light of the aforesaid, in my view, the applicant deserves to be enlarged on bail in the event of his arrest in connection with the

C.R. on the following conditions.

8. (i) The applicant shall be enlarged on bail in connection with C.R.No.34/2005 registered at Deccan Gymkhana Police Station, Pune subject to furnishing a personal bond of Rs.25,000/- (Rs.Twenty five thousand only) with one or two solvent surety in the like sum;

(ii) The applicant will surrender his pass-port to the investigating authority forthwith;

(iii) He shall attend Deccan Gymkhana Police Station, Pune from Thursday, the 24th November 2005 till 26th November 2005 every day between 04.00 p.m. to 06.00 p.m. and thereafter twice a week on Monday and Thursday between 04.00 p.m. to 06.00 p.m. till filing of charge sheet;

(iv) The applicant shall co-operate the investigating authority and shall hand over all relevant documents;

(v) The bail is granted subject to condition that the applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with

prosecution evidence.

(vi) The applicant shall co-operate with the Trial Court for expeditious disposal of the trial. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

(vii) Any observation/s made in this order shall not be constructed as any finding or any expression of opinion on the merits of the case at the time of trial.

9. Application is disposed of in above terms.

(S.C.DHARMADHIKARI, J.)